

AMENDED IN SENATE MAY 28, 2013

AMENDED IN SENATE MAY 15, 2013

AMENDED IN SENATE MAY 7, 2013

AMENDED IN SENATE APRIL 23, 2013

AMENDED IN SENATE APRIL 15, 2013

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**SENATE BILL**

**No. 777**

**Introduced by Senator Calderon**

February 22, 2013

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An act to amend Sections ~~12556, 12726, 25174.7, and 25205.3~~ 12556 and 12726 of, to add Sections 12599.5 and 12635.5 to, and to add Chapter 3.5 (commencing with Section 12559) to Part 2 of Division 11 of, the Health and Safety Code, and to amend Section 15301 of the Vehicle Code, relating to public safety, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 777, as amended, Calderon. Public safety: fireworks.

Existing law authorizes the retail sale of safe and sane fireworks from June 28 to July 6, annually, pursuant to a license issued by the State Fire Marshal, unless otherwise prohibited or regulated by law or ordinance. Existing law requires various entities, including the State Fire Marshal, to seize certain prohibited fireworks. Existing law requires an authority that seizes fireworks to notify the State Fire Marshal of the seizure and provide specified information. Existing law requires the State Fire Marshal to dispose of the fireworks and requires dangerous fireworks to be disposed of according to specified procedures. Existing law requires the State Fire Marshal to acquire and use statewide mobile

dangerous fireworks destruction units to collect and destroy dangerous fireworks from local and state agencies.

This bill would require the State Fire Marshal, by January 1, 2015, to establish and have operational regional collection centers for the purpose of receiving seized safe and sane and federally approved fireworks. The bill would authorize the State Fire Marshal to permit a state licensed fireworks importer and exporter or wholesaler to purchase any fireworks the State Fire Marshal, the Department of Toxic Substances Control, and a recognized 3rd-party testing entity, as defined, deem to be commercially viable, from the State Fire Marshal. The bill would require revenue generated from the sale of fireworks seized by a local authority to be allocated by the State Fire Marshal to the seizing local authority pursuant to an agreement, as provided, thereby making an appropriation. The bill would require the fireworks stored at the regional collection facility to be subject to certain requirements, including that they be stored for a period of not more than 90 days. The bill would require the Department of Toxic Substances Control to develop and publish guidelines for the implementation of these provisions, as provided.

This bill would authorize, beginning January 1, 2015, the sale of certified safe and sane fireworks from 9 a.m. on December 26 to 11:59 p.m. on January 1 of the following year pursuant to a license issued by the State Fire Marshal, if authorized by a charter city, city, county, fire protection district, or city and county ordinance or resolution that may also restrict the hours of use of those fireworks. Since a violation of this provision or other existing related provisions in connection with the sale of those fireworks would be a misdemeanor, the bill would impose a state-mandated local program by creating new crimes.

The bill would also authorize a charter city, city, county, fire protection district, or city and county that adopts an ordinance or resolution authorizing the sale of safe and sane fireworks to require each applicant receiving a permit to pay a fee to the charter city, city, county, fire protection district, or city and county of a pro rata portion of the actual and reasonable costs incurred by the charter city, city, county, fire protection district, or city and county for, among other things, processing and issuing fireworks permits, inspection of fireworks stands, public awareness and education campaigns regarding the safe and responsible use of safe and sane fireworks, and related fire operation and suppression efforts, as specified. The bill would specify that the pro rata portion of those costs shall be based on a percentage of the

permittee's sales and use tax return for the applicable permit period, not to exceed 7% of the gross sales of the fireworks sold in the charter city, city, county, fire protection district, or city and county, except that a cost recovery ordinance or resolution in effect on or before January 1, 2015, would be authorized to supersede that provision.

Existing law provides that if dangerous fireworks are seized pursuant to a local ordinance that provides for administrative fines or penalties and these fines or penalties are collected, the local government entity collecting the fines or penalties shall forward 65% of the collected moneys to the Controller for deposit in the State Fire Marshal Fireworks Enforcement and Disposal Fund.

This bill would delete this provision.

~~Existing law imposes various fees and charges upon the management of hazardous waste, which money is deposited in the Hazardous Waste Control Account in the General Fund and is available, upon appropriation by the Legislature, for, among other things, hazardous waste management. These fees and charges are generally not applicable to hazardous wastes generated or disposed of by public agencies or as part of a public program, or to hazardous waste management facilities that are affiliated with a public agency or public program, as specified.~~

~~This bill would include within the list of hazardous wastes and facilities that are not subject to the above fees and charges (1) hazardous waste that results from the seizure or destruction of illegal fireworks by the State Fire Marshal or other authorized government fire protection agency, (2) a mobile fireworks treatment unit used by the State Fire Marshal to destroy illegal fireworks, and (3) a regional fireworks collection center established by the State Fire Marshal.~~

The bill would require, not later than January 1, 2015, the State Fire Marshal to collect and analyze data relating to fires, damages, seizures, arrests, administrative citations, and fireworks disposal issues caused by the sale and use of both dangerous illegal fireworks and safe and sane fireworks, as provided.

Existing law requires the Department of Motor Vehicles to suspend the commercial license of a person transporting dangerous fireworks, as specified.

This bill would clarify that those provisions do not apply to a person with a valid license under the State Fireworks Law, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote:  $\frac{2}{3}$ . Appropriation: yes. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 12556 of the Health and Safety Code is  
2 amended to read:

3 12556. (a) In addition to the obligations described in Section  
4 13110.5, on or before July 1, 2008, the State Fire Marshal shall  
5 identify and evaluate methods to capture more detailed data relating  
6 to fires, damages, and injuries caused by both dangerous fireworks  
7 and safe and sane fireworks. These evaluation methods shall  
8 include a cost analysis related to capturing and reporting the data  
9 and shall meet or exceed the specificity, detail, and reliability of  
10 the data captured under the former California Fire Incident  
11 Reporting System (CFIRS). The State Fire Marshal shall furnish  
12 a copy of these evaluation methods to any interested person upon  
13 request.

14 (b) Not later than January 1, 2015, the State Fire Marshal shall  
15 collect and analyze data relating to fires, damages, seizures, arrests,  
16 administrative citations, and fireworks disposal issues caused by  
17 the sale and use of both dangerous illegal fireworks and safe and  
18 sane fireworks. The State Fire Marshal shall collect data pursuant  
19 to a methodology developed in consultation with the State Fire  
20 Marshal's General Fireworks Advisory Committee, which consists  
21 of representatives from local fire service and law enforcement  
22 agencies and the fireworks industry.

23 SEC. 2. Chapter 3.5 (commencing with Section 12559) is added  
24 to Part 2 of Division 11 of the Health and Safety Code, to read:

25

26 CHAPTER 3.5. FIREWORKS SELL-BACK PROGRAM

27

28 12559. (a) By January 1, 2015, the State Fire Marshal shall  
29 establish and have operational regional collection centers for  
30 purposes of receiving safe and sane fireworks and federally  
31 approved consumer fireworks seized by local authorities.

1 (b) The regional collection centers shall be located throughout  
2 the state in an amount and in locations determined by the State  
3 Fire Marshal.

4 12559.1. (a) Notwithstanding Section 12723, and upon  
5 compliance with Section 12726, a local authority or the State Fire  
6 Marshal may transfer seized safe and sane fireworks and federally  
7 approved fireworks to a regional collection center.

8 (b) Safe and sane or federally approved fireworks transferred  
9 to a regional collection center shall be deemed “hazardous material”  
10 until the State Fire Marshal, Department of Toxic Substances  
11 Control, and a recognized third-party testing entity make the  
12 determination pursuant to subdivision (c).

13 (c) (1) The State Fire Marshal is authorized to permit a  
14 recognized third-party testing entity to enter the regional collection  
15 center for purposes of making a determination with the State Fire  
16 Marshal and the Department of Toxic Substances Control as to  
17 whether any seized fireworks are either commercially viable or  
18 hazardous waste.

19 (2) Any firework deemed commercially viable may be  
20 repackaged by the State Fire Marshal or the *State Fire* Marshal’s  
21 designee, including, but not limited to, a state licensed fireworks  
22 importer and exporter, a wholesaler purchasing the product  
23 pursuant to subdivision (d), the recognized third-party testing  
24 authority, or a licensed hazardous materials or hazardous waste  
25 hauler.

26 (3) Any product deemed not commercially viable by the State  
27 Fire Marshal, the Department of Toxic Substances Control, and  
28 the third-party testing authority shall be removed from the regional  
29 collection center by the State Fire Marshal or the *State Fire*  
30 Marshal’s designee and transported and disposed of within 72  
31 hours of the determination in accordance with all federal and state  
32 hazardous waste laws and regulations.

33 (d) (1) The State Fire Marshal shall authorize a state licensed  
34 fireworks importer and exporter or wholesaler to purchase any  
35 fireworks deemed to be commercially viable pursuant to  
36 subdivision (c) from the State Fire Marshal.

37 (2) The State Fire Marshal may enter into an agreement with a  
38 local authority for purposes of allocating revenue from the sale of  
39 fireworks pursuant to paragraph (1). Notwithstanding Section  
40 12635, revenue generated from the sale of the safe and sane or

1 federally approved fireworks seized by a local authority shall be  
2 allocated by the State Fire Marshal to the seizing local authority  
3 pursuant to the agreement. The State Fire Marshal shall allocate  
4 no less than 65 percent of the revenues to that local authority.

5 (e) For purposes of this section, “recognized third-party testing  
6 entity” means an independent third-party testing entity recognized  
7 by the federal Consumer Product Safety Commission as an  
8 acceptable testing entity for consumer fireworks.

9 (f) Upon the purchase of fireworks, pursuant to this chapter, a  
10 state-licensed fireworks importer and exporter or wholesaler shall  
11 accept full liability for any damage done by the fireworks and the  
12 State of California shall be indemnified.

13 12559.2. Any fireworks stored at a regional collection center  
14 shall be subject to the requirements of Article 8 (commencing with  
15 Section 989) of Chapter 6 of Title 19 of the California Code of  
16 Regulations and to the requirements of the National Fire Protection  
17 Association (NFPA) 1124: Code for the Manufacture,  
18 Transportation, Storage, and Retail Sales of Fireworks and  
19 Pyrotechnic Articles of 2013, and may be stored for a period not  
20 to exceed 90 days. The regional collection centers shall not be  
21 considered a storage facility for purposes of subdivision (b) of  
22 Section 25123.3.

23 12559.3. (a) The State Fire Marshal and the Department of  
24 Toxic Substances Control shall train local fire and law enforcement  
25 personnel on the requirements of this chapter.

26 (b) The State Fire Marshal shall, in consultation with relevant  
27 state and local public agencies, the fireworks industry, and other  
28 relevant stakeholders, develop, publish, and provide necessary  
29 guidance and training to local agencies ~~who~~ *that* seize, collect,  
30 transport, store, and treat seized fireworks. This training and  
31 education may include, but is not limited to, the following specific  
32 areas:

33 (1) Standards for the transportation, storage, and handling of  
34 fireworks and pyrotechnic articles in accordance with Chapter 6  
35 (commencing with Section 975) of Division 1 of Title 19 of the  
36 California Code of Regulations and the National Fire Protection  
37 Association (NFPA) 1124: Code for the Manufacture,  
38 Transportation, Storage, and Retail Sales of Fireworks and  
39 Pyrotechnic Articles of 2013.

(2) Recognition of explosive materials and isolation procedures in accordance with Chapter 10 (commencing with Section 1550) of Division 1 of Title 19 of the California Code of Regulations and the National Fire Protection Association (NFPA) 495: Explosive Materials Code of 2013.

(3) Recognition of commercial, consumer, and illegal fireworks in accordance with Chapter 6 (commencing with Section 975) of Division 1 of Title 19 of the California Code of Regulations and the National Fire Protection Association (NFPA) 1124: Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles of 2013.

12559.4. The Department of Toxic Substances Control shall develop and publish guidelines for the implementation of this chapter that includes, but is not limited to, the following specific areas:

(a) Standards for the proper handling, transport, and storage of fireworks that are hazardous materials for the purposes of this chapter.

(b) Standards for the proper handling, transport, and disposal of fireworks that are hazardous waste.

(c) A determination of the type of facility that qualifies as a regional collection center.

(d) A definition of “commercially viable” for the purposes of this chapter that ensures that fireworks that should be disposed of as waste are not resold.

SEC. 3. Section 12599.5 is added to the Health and Safety Code, to read:

12599.5. (a) Notwithstanding Sections 12599 and 12672, the State Fire Marshal shall issue separate one-time retail licenses pursuant to this section that shall authorize the retail sale of safe and sane fireworks within this state only from 9 a.m. on December 26 to 11:59 p.m. on January 1 of the following year, inclusive. A license issued pursuant to this section shall be valid for only one seven-day period and shall expire at the end of the period for which it is valid. All fireworks sold pursuant to a license issued pursuant to this section shall have been certified as safe and sane by the State Fire Marshal on or before June 15 of the year in which the validity of the license commences. No other license issued pursuant to this chapter shall authorize the sale of fireworks during that period.

(b) A retail license shall not be issued for the license period authorized by this section unless the charter city, city, county, fire district, or city and county having jurisdiction over the fixed location where the fireworks would be sold adopts an ordinance or resolution allowing that sale, and the application for that license is received by the State Fire Marshal on or before December 15 of the year in which the validity of the license is to commence. The ordinance or resolution authorizing the sale of those fireworks may limit the period of use of those fireworks to specified days and hours within the period during which the sale is authorized by this section.

(c) This section shall become operative on January 1, 2015.

SEC. 4. Section 12635.5 is added to the Health and Safety Code, to read:

12635.5. (a) A charter city, city, county, fire protection district, or city and county that adopts an ordinance or resolution pursuant to Section 12599 or 12599.5 may, through adoption of an ordinance or resolution by the governing body, require each applicant receiving a permit to pay a fee to the charter city, city, county, fire district, or city and county of a pro rata portion of the actual and reasonable costs the charter city, city, county, fire protection district, or city and county incurs that is related to any of the following:

- (1) Processing and issuing permits.
- (2) Inspection of fireworks stands.
- (3) Public education and awareness campaigns regarding the safe and responsible use of safe and sane fireworks, and the dangers and risks posed by the use of illegal fireworks.
- (4) Enforcing the provisions of the code of the charter city, city, county, fire protection district, or city and county with respect to the sale and use of safe and sane fireworks, including extra personnel time and cleanup of the fireworks trash and debris. "Extra personnel time" means employee or contracted employee time that the charter city, city, county, fire protection district, or city and county would not otherwise incur but for the sale and use of safe and sane fireworks.
- (5) Fire operation and suppression efforts that are directly related to safe and sane fireworks.

(b) The pro rata share of the costs shall be specified in the ordinance or resolution and calculated using gross sales as shown



1 on each permittee's sales and use tax return for the applicable  
2 period. The pro rata share of costs shall not exceed 7 percent of  
3 the gross sales of the fireworks sold in the charter city, city, county,  
4 fire protection district, or city and county during the applicable  
5 period. A cost recovery ordinance or resolution in effect on or  
6 before January 1, 2015, may supersede this subdivision.

7 SEC. 5. Section 12726 of the Health and Safety Code is  
8 amended to read:

9 12726. (a) The dangerous fireworks seized pursuant to this  
10 part shall be disposed of by the State Fire Marshal in the manner  
11 prescribed by the State Fire Marshal at any time after the final  
12 determination of proceedings under Section 12724, or upon final  
13 termination of proceedings under Section 12593, whichever is  
14 later. If no proceedings are commenced pursuant to Section 12724,  
15 the State Fire Marshal may dispose of the fireworks after all of the  
16 following requirements are satisfied:

17 (1) A random sampling of the dangerous fireworks has been  
18 taken, as defined by regulations adopted by the State Fire Marshal  
19 pursuant to Section 12552.

20 (2) The analysis of the random sampling has been completed.

21 (3) Photographs have been taken of the dangerous fireworks to  
22 be destroyed.

23 (4) The State Fire Marshal has given written approval for the  
24 destruction of the dangerous fireworks. This approval shall specify  
25 the total weight of the dangerous fireworks seized, the total weight  
26 of the dangerous fireworks to be destroyed, and the total weight  
27 of the dangerous fireworks not to be destroyed.

28 (b) To carry out the purposes of this section, the State Fire  
29 Marshal shall acquire and use statewide mobile dangerous  
30 fireworks destruction units to collect and destroy seized dangerous  
31 fireworks from local and state agencies.

32 ~~SEC. 6. Section 25174.7 of the Health and Safety Code is~~  
33 ~~amended to read:~~

34 ~~25174.7. (a) The fees provided for in Sections 25174.1 and~~  
35 ~~25205.5 do not apply to any of the following:~~

36 ~~(1) Hazardous wastes that result when a government agency,~~  
37 ~~or its contractor, removes or remedies a release of hazardous waste~~  
38 ~~in the state caused by another person.~~

39 ~~(2) Hazardous wastes generated or disposed of by a public~~  
40 ~~agency operating a household hazardous waste collection facility~~

1 in the state pursuant to Article 10.8 (commencing with Section  
2 25218), including, but not limited to, hazardous waste received  
3 from conditionally exempt small quantity commercial generators;  
4 authorized pursuant to Section 25218.3.

5 (3) Hazardous wastes generated or disposed of by local vector  
6 control agencies which have entered into a cooperative agreement  
7 pursuant to Section 116180 or by county agricultural  
8 commissioners, if the hazardous wastes result from their control  
9 or regulatory activities and if they comply with the requirements  
10 of this chapter and regulations adopted pursuant thereto.

11 (4) Hazardous waste disposed of, or submitted for disposal or  
12 treatment, by any person, which is discovered and separated from  
13 solid waste as part of a load checking program.

14 (5) Hazardous waste that results from the seizure or destruction  
15 of illegal fireworks by the State Fire Marshal or other authorized  
16 government fire protection agency pursuant to Section 12721.

17 (b) Notwithstanding paragraph (1) of subdivision (a), any person  
18 responsible for a release of hazardous waste, which has been  
19 removed or remedied by a government agency, or its contractor,  
20 shall pay the fee pursuant to Section 25174.1.

21 (c) Any person who acquires land for the sole purpose of  
22 owner-occupied single-family residential use, and who acquires  
23 that land without actual or constructive notice or knowledge that  
24 there is a tank containing hazardous waste on or under that  
25 property, is exempt from the fees imposed pursuant to Sections  
26 25174.1 and 25205.5 in connection with the removal of the tank.

27 SEC. 7. Section 25205.3 of the Health and Safety Code is  
28 amended to read:

29 25205.3. The following facilities are exempt from the fees  
30 imposed by this article:

31 (a) Any household hazardous waste collection facility operated  
32 pursuant to Article 10.8 (commencing with Section 25218).

33 (b) Any facility operated by a local government agency, or by  
34 any person operating a hazardous waste collection program under  
35 an agreement with a public agency, which is used for wastes which  
36 meet the requirements of paragraph (3) of subdivision (a) of Section  
37 25174.7.

38 (c) That portion of a solid waste facility permitted pursuant to  
39 Chapter 3 (commencing with Section 44001) of Part 4 of Division  
40 30 of the Public Resources Code, which is used for the segregation,

1 ~~handling, and storage of hazardous waste separated from solid~~  
2 ~~waste loads received by the facility, pursuant to a load checking~~  
3 ~~program.~~

4 ~~(d) A facility used solely for the treatment, storage, disposal,~~  
5 ~~or recycling of hazardous waste which results when a public agency~~  
6 ~~or its contractor investigates, removes, or remedies a release of~~  
7 ~~hazardous waste caused by another person.~~

8 ~~(e) (1) A mobile fireworks treatment unit used by the Office~~  
9 ~~of the State Fire Marshal to destroy illegal fireworks pursuant to~~  
10 ~~Section 12721.~~

11 ~~(2) A regional collection center for fireworks established~~  
12 ~~pursuant to Section 12559.~~

13 ~~(f) (1) For purposes of fees assessed in any reporting period~~  
14 ~~beginning July 1, 1990, or subsequently, a facility that has been~~  
15 ~~issued a permit for the purpose of storing hazardous waste onsite,~~  
16 ~~and whose permit has expired, if all of the following has occurred:~~

17 ~~(A) The facility has received no waste from offsite since the~~  
18 ~~permit expired.~~

19 ~~(B) The owner or operator gave the department timely~~  
20 ~~notification of intent to close the facility, pursuant to regulations~~  
21 ~~adopted by the department.~~

22 ~~(C) At least 90 days have elapsed since the owner or operator~~  
23 ~~gave the department that notification.~~

24 ~~(D) The department did not complete its review of the closure~~  
25 ~~plan within 90 days of receiving the notification.~~

26 ~~(2) This exclusion shall take effect the reporting period~~  
27 ~~following the reporting period in which the facility first satisfied~~  
28 ~~the requirements of paragraph (1) and did not accumulate waste~~  
29 ~~onsite for more than 90 consecutive days.~~

30 ~~SEC. 8.~~

31 *SEC. 6.* Section 15301 of the Vehicle Code is amended to read:

32 15301. (a) The Department of Motor Vehicles, in conjunction  
33 with the State Fire Marshal, shall develop regulations and  
34 procedures to temporarily suspend the commercial motor vehicle  
35 license of a person who is operating a commercial motor vehicle  
36 while transporting dangerous fireworks having a gross weight of  
37 10,000 pounds or more.

38 (b) A driver of a commercial motor vehicle shall not operate a  
39 commercial motor vehicle for three years if the driver is convicted

1 of transporting dangerous fireworks having a gross weight of  
2 10,000 pounds or more.

3 (c) This section shall not apply to a person who holds and is  
4 operating within the scope of a valid license as described in Section  
5 12516 of the Health and Safety Code or valid permit as described  
6 in Section 12522 of the Health and Safety Code.

7 ~~SEC. 9.~~

8 *SEC. 7.* The provisions of this act are severable. If any  
9 provision of this act or its application is held invalid pursuant to  
10 the federal Resource Conservation and Recovery Act, that  
11 invalidity shall not affect other provisions or applications that can  
12 be given effect without the invalid provision or application.

13 ~~SEC. 10.~~

14 *SEC. 8.* No reimbursement is required by this act pursuant to  
15 Section 6 of Article XIII B of the California Constitution because  
16 the only costs that may be incurred by a local agency or school  
17 district will be incurred because this act creates a new crime or  
18 infraction, eliminates a crime or infraction, or changes the penalty  
19 for a crime or infraction, within the meaning of Section 17556 of  
20 the Government Code, or changes the definition of a crime within  
21 the meaning of Section 6 of Article XIII B of the California  
22 Constitution.